

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policies and Rules Governing)

Interstate Pay-Per-Call and Other)

Information Services Pursuant to)

the Telecommunications Act of 1996)

CC Docket No. 96-146

BELLSOUTH REPLY COMMENTS

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby replies to comments submitted in response to the Commission's *Notice of Proposed Rulemaking* in the above referenced proceeding.¹

The Telecommunications Act of 1996² amended Section 228 of the Communications Act³ to close certain loopholes and otherwise to correct certain shortcomings in pre-existing law designed to provide consumers protection against abusive practices by purveyors of pay-per-call services. By and large, the Commission in this proceeding conformed its rules to the new statutory requirements by codifying "virtually verbatim" in its rules the language of Section 228.⁴ BellSouth shares the Commission's hopeful anticipation that these corrective measures by

¹ Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act; Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket Nos. 96-146 and 93-22, *Order and Notice of Proposed Rulemaking*, FCC 96-289 (released July 11, 1996) ("Notice").

² Pub. L. 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. § 228.

⁴ Notice at ¶ 12.

No. of Copies rec'd
List ABCDE

009

Congress, as adopted by the Commission, will blunt the scurrilous practices that have become all too common in the industry.

It was perhaps a sad commentary, then, that the Commission perceived a need in the *Notice* to “look not only at the practices that are now prohibited but also to the likely responses of IPs and common carriers who might seek to evade the statute.”⁵ Even sadder still is that the cause for the Commission’s concern appears to have been validated by comments of certain parties already attempting to interpret out of existence the clear import of the Act. BellSouth encourages the Commission throughout its vigilant attempt to preempt abusive creativity, however, to ensure that the countermeasures it adopts are directed at the appropriate causative agents. To that end, BellSouth opposes suggestions that would impose costs or other obligations on local exchange carriers as the solution to this unfortunate problem caused by the practices of a handful of unscrupulous IPs and IXC’s.

That the Commission was justified in its anticipation of likely attempts to evade the statute seems to have been confirmed by the comments of Pilgrim Telephone, Inc. Notwithstanding the clear indication of Congressional intent to “add protection”⁶ for consumers and to “close a loophole in current law,”⁷ Pilgrim asserts that Congress actually intended, “[i]n a significant departure from prior law,”⁸ to “permit greater options for consumers and service providers,”⁹ including “even more options for the provision and billing of information services, . . . [and] even

⁵ *Notice* at ¶ 41.

⁶ H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 202 (1996) (“Conference Report”).

⁷ Conference Report at 203.

⁸ Pilgrim Comments at 12.

⁹ *Id.*

greater 800 number usage for access and billing.”¹⁰ Similarly characteristic of the interpretive spin attempted by Pilgrim is its allusion to the Commission’s instant attempt to preempt abusive tactics as “the efforts by the Commission to anticipate future competitive moves which may be made in the industry.”¹¹

Extending its revisionist interpretation further, Pilgrim suggests that the “culprit” in the current scheme is the 900-service blocking mechanism previously implemented by LECs to combat the abuses that originally developed under that service arrangement.¹² According to Pilgrim, certain alleged “deficiencies” of this system of consumer protection are the root cause of pay-per-call service providers’ migration to toll free access arrangements. Consistent with this “shift the blame” approach to defining the problem, Pilgrim suggests that LECs -- rather than those involved in provision of the services at issue -- should be called upon to remedy the situation, principally by modifying their line information database (LIDB) systems to accommodate lookup by third parties of 900 blocking information.

As BellSouth showed when this “solution” was proposed previously, its implementation would be both time-consuming and costly and unlikely to generate the intended benefit.¹³ An enhancement to add the 900 blocking indicator to LIDB would have to be undertaken through Bellcore and would require modifications not only of LIDB, but also of various of LEC support systems. To achieve full coverage, all LEC data base owners would have to add the

¹⁰ *Id.*

¹¹ *Id.* at 20-21.

¹² *Id.* at 29.

¹³ See BellSouth Reply, Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22 (filed Oct. 31, 1994).

enhancement. BellSouth anticipates such an undertaking would require a minimum of twelve months -- certainly not the timely response to the problems of abuse as envisioned by Congress.

More important, however, is that even if implemented, the effectiveness of this proposal would be wholly dependent upon the willingness of IPs or billing clearinghouses to query the LIDB system. Of course, many (indeed, probably most) information service providers are legitimate and can be expected to play by the rules. But, these parties' behavior is not the focus of the instant proceeding. Rather, the Commission's present inquiry is with respect to those providers whose "past evasions have resulted in widespread deception and abuse."¹⁴ This unfortunate track record offers nothing to suggest that service providers who have skirted the law in the past would have any greater incentive to utilize an available LIDB query capability. Inasmuch as such a "solution" would not be likely to resolve the problem to which it would be addressed, there is little basis for requiring LECs to pursue it.

The Florida Public Service Commission (FPSC) has recommended a different approach. Under the "proprietary card blocking service" arrangement previously proposed in FPSC's December 7, 1995, Petition to Initiate Rulemaking, originating LECs would transmit a caller's calling card number and the proprietary PIN entered by the caller to the IP, who would then return that information to the LEC as a form of verification of charges to the appropriate calling card. As BellSouth observed in Comments on FPSC's proposal,¹⁵ in today's environment, a caller's PIN is not normally retained with the calling card number after LIDB verification has been performed at the time of call setup. FPSC's proposal, however, appears to contemplate delivery

¹⁴ Notice at ¶ 41.

¹⁵ See BellSouth Comments, Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, RM No. 8783 (filed May 1, 1996).

of this very proprietary information to classes of service providers some of whom already are alleged to engage in unscrupulous behavior, including fraud. This increased exposure to fraud could easily offset any gains predicted by FPSC from its proposal.

Moreover, such an arrangement would not preclude an information service provider from using the ANI delivered with a call to a 1-800 or 1-888 number as the “bill to” number in the EMI record in lieu of the calling card number with PIN. The Commission’s proposal to consider such practices a violation of Section 228(c)(7)(A) of the Communications Act,¹⁶ of course, should dissuade many from that practice. Accordingly, the Commission should refrain from requiring LECs to expend the developmental and administrative resources that would be necessary to implement measures subject to these known deficiencies.

In lieu of such externally imposed solutions to potential abuses regarding calls to toll-free numbers, BellSouth adopted a policy in 1994 against billing for any pay-per-call services other than those placed to 900 numbers. This policy is made clear to every party with whom BellSouth has a billing and collection agreement. Thus, any call record submitted to BellSouth by an IXC or billing clearinghouse that indicates charges for a call placed to an 800, 888, or other toll-free prefix is rejected for billing. In light of this policy, BellSouth is not affected by the Commission's proposal to require LECs to display separately on a customer’s bill any charges for presubscribed information services accessed through a toll free number. Nonetheless, BellSouth believes that such a rule is appropriate for instances in which a LEC chooses to provide billing for such services.

¹⁶ Notice at ¶ 45.

Of course, even BellSouth's policy remains susceptible to deliberate fraud by an IP or IXC which intentionally circumvents the policy and contract provisions by substituting a destination number in lieu of the dialed number in bill records provided to BellSouth. The Commission can add teeth to compel compliance with policies such as BellSouth's by requiring IXCs and IPs to deliver to the billing LEC the actual dialed number. BellSouth also concurs with GTE's recommendation that the Commission grant LECs a presumption of "good faith" when acting to terminate a billing and collection agreement upon discovery or suspicion of "masqueraded" billing submissions.¹⁷

Finally, lest the errant conclusion be drawn that it is only unscrupulous service providers who are the miscreants abusing public trust, the Commission must recognize that on occasion it is consumers perpetrating fraud against other consumers by misuse or theft of calling card numbers. Thus, BellSouth concurs with Southwestern Bell's request that the Commission require IPs desiring to charge services to a LEC calling card to validate the card through the LEC's LIDB system.¹⁸ Such a query provides general assurance that the user of the calling card has the authority to do so through verification of the card holder's PIN. Absent a LIDB query, anyone knowing the first ten digits of a calling card number, which is often the same as a customer's home telephone number, can enter any four digits as the PIN code and the service provider is unable to tell if the number is valid. A requirement that service providers verify calling card numbers through a LIDB query would help eradicate this form of abuse.

¹⁷ GTE Comments at 3-4.

¹⁸ Southwestern Bell Comments at 1-2.

CONCLUSION

BellSouth is hopeful that the measures enacted by Congress in the Telecommunications Act of 1996, as supplemented by the Commission's proposals in this proceeding, will be effective in curtailing abuses of toll-free dialing arrangements. BellSouth encourages the Commission, however, in its pursuit of "finishing details" on the scheme enacted by Congress, not to adopt "solutions" that have known deficiencies and that, therefore, would impose unwarranted costs on LECs.

Respectfully submitted,

BELLSOUTH CORPORATION

Its Attorneys


M. Robert Sutherland
A. Kirven Gilbert III

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 242-2200

DATE: September 16, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of September, 1996 serviced all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties as set forth on the attached service list.


Sheila Bonner

CC DOCKET NO. 96-146

United States Telephone Association
Mary McDermott
Linda Kent
Charles Cosson
Keith Townsend
1401 H Street, N.W. - Suite 600
Washington, D.C. 20005

Southwestern Bell Telephone Company
Robert M. Lynch
Durward D. Dupre
J. Paul Walters, Jr.
One Bell Center, Room 3520
St. Louis, Missouri 63101

Pilgrim Telephone, Inc.
Walter Steimel, Jr.
Fish & Richardson
601 13th Street, N.W.
Fifth Floor North
Washington, D.C. 20005

Florida Public Service Commission
Cynthia B. Miller
Senior Attorney
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

The Public Utilities Commission of Ohio
Betty D. Montgomery
Duane W. Luckey
Jodi J. Bair
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793

The People of the State of California and the
Public Utilities Commission of the State of
California
Peter Arth, Jr.
Edward W. O'Neill
Mary Mack Adu
505 Van Ness Avenue
San Francisco, CA 94102

David A. Irwin
William J. Byrnes
Michelle A. McClure
Irwin, Campbell & Tannenwald, P.C.
(Total Telecommunications, Inc.,
SamComm, Inc. and
Big Sky Teleconferencing, Ltd.)
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101

Alliance for Young Families
Donna J. Sheridan
516 Keystone Avenue, #517
Reno, NV 89503

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, L.L.P.
(Direct Marketing Association, Inc.)
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005

Joel R. Dichter, Esq.
Klein, Zelman, Rothermal, & Dichter, L.L.P.
(Teleservices Industry Association)
485 Madison Avenue
New York, NY 10022

Excel Telecommunications, Inc.
J. Christopher Dance
Vice President, Legal Affairs
Kerry Tassopoulos
Director of Government Affairs
8750 North Central Expressway
20th Floor
Dallas, TX 75231

Thomas K. Crowe
Michael B. Adams, Jr.
LAW OFFICES OF THOMAS K. CROWE, P.C.
(Counsel for Excel Telecommunications, Inc.)
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037

Commonwealth of the Northern Mariana Islands
Dave Ecret
Special Assistant to the Governor
for Telecommunications and Utilities
Capitol Hill
Saipan, MP/USA 96950

Thomas K. Crowe
LAW OFFICES OF THOMAS K. CROWE, P.C.
(Counsel for the Commonwealth of the
Northern Mariana Islands)
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037

GTE Service Corporation
Richard McKenna, HQE03J36
P. O. Box 152092
Irving, TX 75015-2093

Gail L. Polivy
(GTE Service Corporation)
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Andrew Egendorf
P. O. Box 703
Lincoln, MA 01773